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PRE-APPEAL BRIEF REQUEST FOR REVIEW

SCS-540-551

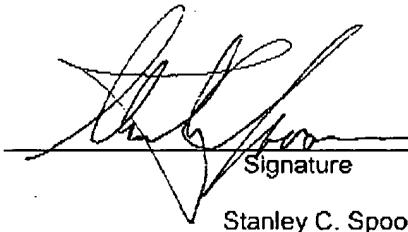
	Application Number	Filed
	10/525,063	February 18, 2005
First Named Inventor		KAYE
Art Unit	Examiner	T. Bonk
3725		

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.



Signature

Stanley C. Spooner

Typed or printed name

I am the
 Applicant/Inventor

Assignee of record of the entire interest. See 37 C.F.R. § 3.71. Statement under 37 C.F.R. § 3.73(b) is enclosed. (Form PTO/SB/96)

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703-816-4028

Requester's telephone number

Attorney or agent acting under 37CFR 1.34.
Registration number if acting under 37 C.F.R. § 1.34 _____

April 21, 2008

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.*

*Total of 1 form/s are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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STATEMENT OF ARGUMENTS IN SUPPORT OF
PRE-APPEAL BRIEF REQUEST FOR REVIEW

APR 21 2008

The following listing of clear errors in the Examiner's rejection and her failure to identify essential elements necessary for a *prima facie* basis of rejection is responsive to the Final Official Action mailed December 21, 2007 (Paper No. 09262007)

1. The Examiner admits that Gilb (U.S. Patent 4,410,294) fails to teach "the composite material and bending operation completed before the curing"

The Examiner admits on page 3 of the Final Rejection that Gilb fails to teach the step of "cutting out a blank from a sheet of composite material" or any other specified feature of the "cutting out" step or the claimed "bending operation" with such a composite material or the "curing the bracket" step of Applicant's method with respect to the composite material. Thus, while the Examiner words her admission in the form of two claimed features, this is actually an admission that Gilb fails to teach all three steps recited in Applicant's independent claim 1, i.e., "cutting out" a blank of composite material, "undertaking a bending operation" to bend the blank and "curing the bracket." These admissions are very much appreciated.

2. Error #1 – The Examiner's acknowledgment that Fogg and Machida teach composite material handling does not suggest a composite material blank "having a central portion including at least one fold line defining first and second regions of the blank" or that the claimed "fold line" extends "only partially across the blank" and "creating non-folding portions of said blank at each end of the fold line"

Fogg and Machida teach conventional composite forming techniques, but there is no teaching that these composite forming techniques could be combined with metal blanks or that metal shaping techniques could be used with composite materials. The Examiner makes no allegation that Fogg or Machida teach the claimed blank "having a central portion including at least one fold line defining first and second regions of the blank" or a "fold line extending only

KAYE

Appl. No. 10/525,063

April 21, 2008

partially across the blank" or "creating non-folding portions of said blank at each end of the fold line."

In the Fogg reference, fold lines 44, 30 and 48 extend all the way across the entire width of the blank. Fold lines 34 and 36 extend effectively across the entire blank, as slots 50 and 52 are mere extensions of fold lines 34 and 36. There is no non-folding portion of the blank at either end of the fold lines 34 and 36 (or 44, 30 and 48 for that matter) let alone both ends as claimed.

Machida, in that it illustrates cross-sections of a panel to be bent, does not illustrate anything at the end of the single fold line (there is only a single fold line and it is believed to extend into and out of the plane of the page). There is certainly no disclosure in Machida of any structure at any end of the fold line, let alone the creation of any non-folding portions of the blank.

3. Error #2 – The Examiner fails to provide any “reason” for combining Gilb (dealing with metal bending configurations) with either Fogg or Machida (teaching composite technology)

Assuming only for the purpose of argument that every claimed aspect of the present invention is disclosed in the Gilb reference when combined with Fogg or the Gilb reference combined with Machida, the Examiner has failed to provide any explicit analysis of why one would combine the references.

In its recent decision, the U.S. Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (April 2007), held that it is often necessary for a court to look to interrelated teachings of multiple patents, the effects of demands known to the design community or present in the marketplace and the background knowledge possessed by a person of ordinary skill in the art in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. The Supreme Court held that "[t]o facilitate review, this analysis should be made explicit." *Id.* at 1396. The Examiner's failure to provide any "explicit" analysis evidences the lack of a *prima facie* case of obviousness.

KAYE
Appl. No. 10/525,063
April 21, 2008

The Supreme Court in its *KSR* decision went on to say that it followed the Court of Appeals for the Federal Circuit's advice that "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" (emphasis added, the Supreme Court quoting from the Court of Appeals for the Federal Circuit in *In re Kahn*, 78 USPQ2d 1329 (Fed. Cir. 2006)).

The Examiner's only statement with respect to the Gilb/Fogg combination is that it would have been obvious "to change the blank's material composition and the curing ability of this composition in order to provide a element with 'high accuracy . . . good workability . . . (and) integrally hardened'" citing Fogg at column 2, lines 10-55. Where the Examiner finds support for this conclusory statement in the Fogg reference is not seen. Further, the Fogg reference merely discloses the general benefits of using composite materials and has nothing to do with use of metal blanks. There is no disclosure that Fogg recognizes any benefit of "cutting" a blank having the configuration set forth in claim 1 or the bending step and then the subsequent curing step.

There is simply no reason for one of ordinary skill in the art to adopt composite material from the Fogg reference, and combine with the metal bracket teachings of Gilb to create a composite material with the fold lines extending only partially across the blank and "creating non-folding portions of the blank at each end of the fold line," bending the composite blank and then curing the composite blank. The Examiner's reference to "high accuracy . . . good workability . . . (and) integrally hardened" simply does not provide any motivation for combining elements from the Gilb and Fogg references.

With respect to the Gilb/Machida combination, the same argument as noted above is apparent. The Examiner makes only the conclusory statement that it would be obvious "to change the blank's material composition and the curing ability of this composition in order to create a

KAYE

Appl. No. 10/525,063

April 21, 2008

structural fitting (bracket) that 'has adequate strength to transfer the necessary loads with a minimum of weight . . . (with) low cost means of fabricating" citing Machida at column 1, line 55 to column 2, line 22. While there may be language somewhere in the cited portion of the Machida reference relating to the ultimate product having adequate strength to transfer the necessary loads, the Examiner fails to identify her alleged reasons why one of ordinary skill in the art would pick and choose the claimed features from the Gilb reference and then subsequently apply them to a composite construction as taught in Machida.

In view of the above, the Examiner has simply failed to meet her burden of establishing a *prima facie* case of obviousness by failing to provide any explicit analysis as to why she picks and chooses particular elements and ignores others from the Gilb and Fogg/Machida references and then combines the chosen elements in a manner only taught by Applicant's independent claim 1 and claims dependent thereon. The Examiner has simply failed to set out a *prima facie* case of obviousness of claim 1 in view of the cited prior art.

4. Error #3 – The Examiner fails to appreciate that both the Fogg and Machida references teach away from the features of Applicant's independent claim 1

As noted above, both the Fogg and Machida references teach that the fold line extends completely across the blank and that no non-folding portion of the blank exists at each end of the fold line. In the Fogg reference, all of the portions beyond any fold line are folded, i.e., there are no "non-folding portions." Thus, Fogg teaches to one of ordinary skill in the art that any portions beyond the fold line should be folded. Machida teaches only a single fold line and illustrates no non-folded portions.

Thus, the teaching of both secondary references would lead one of ordinary skill in the art away from Applicant's claimed blank, i.e., which requires "the fold line extending only partially across the blank" and "creating non-folding portions of said blank at each of the fold line." If

KAYE

Appl. No. 10/525,063

April 21, 2008

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Fogg and Machida are relied upon for teaching basic composite construction, the Examiner must explain how one of ordinary skill in the art would ignore the teachings contained in Fogg and Machida and why one would instead substitute the metal forming pattern disclosed in Gilb.

The Examiner simply does not explain why one ignores the Fogg and Machida teachings even if a *prima facie* case of obviousness had been made out in the Official Action. Clearly any case has been rebutted by this contrary teaching in each of the secondary references.

SUMMARY

The Examiner's admission regarding the failure of the Gilb disclosure to disclose anything relating to composite engineering is very much appreciated. While the Fogg and Machida references teach composite engineering, they do not teach features which are taken from the Gilb reference. Even if all claimed structures and structural interrelationships are shown in two of the cited references, the Examiner provides no reason for picking and choosing elements from the separate references and then combining them in the manner of Applicant's claims. Thus, the Examiner fails to establish a *prima facie* case of obviousness. Further, the Examiner ignores the contrary teachings of the Fogg and Machida references and fails to explain why one of ordinary skill in the art would not be led towards these contrary conclusions. This contrary teaching of the Fogg and Machida references comprises a complete rebuttal of any *prima facie* case of obviousness even if one had been made, which, as noted above, has been disputed.

As a result of the above, there is simply no support for the rejection of Applicant's independent claim 1 or claims dependent thereon under 35 USC §103. Applicant respectfully requests that the Pre-Appeal Panel find that the application is allowed on the existing claims and prosecution on the merits should be closed.